IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1987 of 2026
Reserved on: 04.11.2026
Date of Decision: 05.11.2026
Uploaded on: 05.11.2026

Sameer @ Rajoo ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram
Hon'ble Mr Justice Chirag Bhanu Singh, Judge.
Whether approved for reporting?[1]

For the Petitioner : Mr. Jeevan Kumar, Advocate.

For the Respondent/State : Mr. Lokender Kutlehria, Additional Advocate General.

Chirag Bhanu Singh, Judge

The petitioner has preferred an application under Section 483 of Bharatiya Nagarik Suyraksha Sanhita, 2023 (in short "BNSS") seeking post-arrest bail in Case FIR No. 35 of 2026, dated 01.04.2026 registered at Police Station Palampur, District Kangra, H.P., under Sections 20 & 21 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the Act").

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. The facts which emerge from the status report, so filed by the State is that the on 01.04.2026, Head Constable Sudesh Kumar along with the police team had left for patrolling. At about 2:50 PM, when the police patrol was present near Ghuggar Chowk, Palampur, a secret information was received that Sameer Chand alias Rajoo, son of late Shri Gyan Chand, resident of Ward No. 9, Village & Post Office Chowki Khalet, Tehsil Palampur, District Kangra, H.P., was dealing in the sale and purchase of narcotics from his residential house. It was further informed that in case the place is raided, a huge catche of drugs may be made.

3. Acting swiftly, the Investigating Officer recorded the reasons of belief under Section 42(2) of the NDPS Act and sent the same through WhatsApp on a phone bearing No. 82192-82766.

4. While on its way to the house of the accused, the police patrol asked the local Councillor, Nisha Raj, to bring one other person as an independent witness. At about 4:20 PM, the said Councillor met the police party, however, since no other independent witness was available, Constable Ashok Kumar

from the police party was associated as the second independent witness.

5. Thereafter, the raiding party proceeded to the house of the accused Sameer and conducted the search of the premises in the presence of the independent witnesses. During the course of the search, contraband in the shape of sticks was found in a Godrej almirah along with currency notes amounting to ₹95,000/- (₹ 500 × 190). The contraband, on the basis of experience and smell, was found to be charas. Another polythene packet tied with a knot was also recovered from the almirah, containing heroin (chitta). On weighing, the chitta (heroin) was found to be 5.84 grams, while the charas was found to be 5.69 grams.

6. After following all the codal formalities, the Investigating Officer had taken the contraband into possession. The accused came to be arrested at the spot. The present petitioner is still in judicial custody.

7. I have heard the learned counsel for the parties and gone through the records meticulously.

8. It was urged with vehemence by the learned counsel for the petitioner that "intermediate" quantity of contraband had been recovered from the petitioner, and as such, the rigors of Section 37 would not apply with the same force. No doubt, two other cases stand registered against the petitioner, however, in one of the cases, police has already filed a cancellation report, while the other case relates to a small/intermediate quantity. Seeing to the quantity of contraband recovered in the present case, the petitioner was entitled to the discretion of bail, being an addict and not a peddler.

9. *Per contra,* Mr. Lokender Kutlehria, the learned Additional Advocate General for the State has vociferously urged that keeping in view the past antecedents of the petitioner, it seems that his *modus operandi* is to carry small quantity of contraband. There are chances that the petitioner may again indulge in same and similar activities in the future too. The discretion of bail, thus, cannot be exercised in his favour.

10. The perusal of the report does show that the quantity of contraband recovered in the present case is indeed "less than commercial", being 5.84 grams of heroin (Chitta) & 5.69 grams

of charas and as such, the rigors of Section 37 will not *stricto sensu* apply in the facts and circumstances of the present case with the same vigour. The recovery is also not solely attributed to the petitioner.

11. The registration of the earlier cases under the Act is, however, suggestive of the fact that the petitioner is an habitual offender. However, out of the two cases, in one the police had filed a cancellation report and in the other quantity recovered was "intermediate" in quantity.

12. It further transpires from the record that the charge-sheet has already been filed. The culmination of the trial is thus likely to take sufficient time. Pre-trial incarceration is otherwise generally loathed by the Courts, as has been held by the Hon'ble Supreme Court in catena of decisions including ***Union of India vs. K.N. Nazeeb 2021 (3) SCC 713 & Javed Gulam Nabi Shaikh vs. State of Maharashtra*** & ***Another (Criminal Appeal No.2787 of 2024 decided on 03.07.2024).***

13. "Bail, not jail" is the golden thread which has been running right through the various judgments rendered by the Hon'ble Supreme Court starting from ***Gurbaksh Singh Sibbia &***

Others v. State of Punjab, (AIR 1980 SC 1632), which has consistently been followed till the decision rendered in ***P. Chidambaram v. Directorate of Enforcement, (AIR 2019 SC 4198)***. The object of granting bail was further elucidated in ***Sanjay Chandra & Others v. Central Bureau of Investigation, (AIR 2012 SC 830)***. The Hon'ble Supreme Court has further reiterated that grant of bail was a general rule, as was categorically held in ***Dataram Singh v. State of Uttar Pradesh, [(2018) 3 SCC 22 : AIR 2018 SC 980]***.

14. The Hon’ble Supreme Court and this Court, in a catena of decisions, have repeatedly held that an accused is presumed to be innocent until proven guilty. The trial is still at its inception and is likely to take sufficient time. Even otherwise, the quantity of contraband recovered in the present case is intermediate.

15. Though a repeat offender under normal circumstances this Court would not have exercised discretion in his favour but seeing to the peculiar circumstances, discussed above and keeping in view the fact that the quantity of contraband recovered from the accused in the present case is

less than commercial and the trial is likely to take time, it would in the interest of justice and fairplay that the discretion of bail is exercised in his favour, but subject to strict terms.

16. As a sequel, while allowing the present petition, it is directed that in case the petitioner is, henceforth, found to be indulging in any similar activity and an FIR is registered against him under the provisions of the Act, not only the present bail granted shall stand forfeited but, the State would be at liberty to take steps for seeking preventive detention of the petitioner or for sending him for treatment or reformation.

17. For all the reasons discussed hereinabove, the bail petition is thus allowed. As a sequel, the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the tune of Rs.50,000/- with two local sureties of the like amount, to the satisfaction of the learned trial Court subject to the following conditions:-

> "i) That the petitioner shall not tamper with the prosecution evidence nor intimidate, threaten or coerce the witnesses conversant with the facts of the case;
>
> ii) That the petitioner shall put in appearance before the Investigating Officer or the Court as and when directed;

iii) That the petitioner shall not leave the territory of India without the express permission of the Court, he shall surrender passport, if any, before the investigating agency;

iv) The petitioner shall not indulged in any similar activity again."

18. The observations, made hereinabove, shall not be taken, as an expression of opinion, on the merits of the case, as these observations are confined only for the purposes of the disposal of the present petition.

19. A copy of this order be sent to the Superintendent, **Lala Lajpat Rai District & Open Air Correctional Home Dharamshala, District Kangra, H.P. and the learned Trial Court by FASTER.**

20. Petition stands disposed off in the aforesaid terms, so also the pending miscellaneous applications, if any.

(Chirag Bhanu Singh)
Judge

05th November, 2026
(Shamsh Tabrez)

SHAMSH TABREZ
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